IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17036 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARIBHAI VELJIBHAI CHAUDHARI

Versus

MANIBEN AMTHABHAI

Appearance:

1. Special Civil Application No. 17036 of 2004

MS TRUSHA K PATEL for Petitioner No. 1-2

MR RJ GOSWAMI for Respondent No. 1

MR PR ABICHANDANI, AGP for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 10/02/2005

ORAL JUDGEMENT

#. Rule. Mr.R.J.Goswami waives service of rule on

behalf of respondent No.1 and Mr.Abichandani, learned AGP, waives service of rule for respondent nos.2 and 3.

#. With the consent of the learned advocates for the respective parties, the matter is taken up for final hearing today.

#. In this petition filed under Article 226/227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 31.8.2003 / 22.9.2004 in Revision Application No.6 of 2003 in dismissing the same and confirming the order passed by the Collector, Gandhinagar dated 31.3.2003 with respect to the revenue entry No.2912 with regard to the land in question, i.e. land bearing Block No.1820 paiki situated at village Santej, Taluka Kalol, District Gandhinagar.

#. It is the case of the petitioners that the petitioners have purchased the land bearing Block No.1820 paiki situated at village Santej, Taluka Kalol, District Gandhinagar by registered sale deed dated 4.3.1995 and necessary revenue entry in the revenue record was mutated by entry No.2912. The said entry was challenged by respondent NO.1 herein and the Mamlatdar, Kalol in exercise of the powers under Rule 108 of the Gujarat Land Revenue Rules ("the Rules" for short) which are popularly known as "RTS proceedings" set aside the entry No.2912 by his order dated 11.8.1998. Being aggrieved and dissatisfied with the order passed by the Mamlatdar, Kalol dated 11.8.1998 in setting aside the revenue entry No.2912, petitioner No.1 preferred the appeal, being RTS Appeal No.40 of 1999 before the Prant Officer, Mahesana who by his order dated 30.6.1999 allowed the said appeal by quashing and setting aside the order passed by the Mamlatdar, Kalol dated 11.8.1998 in restoring the revenue entry No.2912. Being aggrieved and dissatisfied with the same, respondent NO.1 preferred Appeal No.65 of 2000 before the District Collector, Gandhinagar under Rule 108(6) of the Rules who by his order dated 31.3.2003 quashed and set aside the order passed by the Prant Officer, Mahesana and also set aside the revenue entry No.2912 an directed to initiate the proceedings under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act ("the Fragmentation Act" for short). Being aggrieved and dissatisfied with the same, the petitioners preferred Revision Application No.6 of 2003 before the Secretary (Appeals), which came to be dismissed by his judgment and order dated 31.8.2003 / 22.9.2004 confirming the order passed by the Collector,

Gandhinagar dated 31.3.2003 and the order with regard to cancellation of the revenue entry No.2912, which has given rise to the present petition under Article 226/227 of the Constitution of India.

#. Ms.Trusha K.Patel, learned advocate appearing for the petitioners, has submitted that the entry in question, i.e. entry No.2912 came to be set aside by the Collector and confirmed by the Secretary (Appeals) mainly on the ground that by virtue of the transaction between the petitioners and respondent No.1, there would be a breach of the provisions of the Fragmentation Act. She has relied upon the decision of this Court in the case of Evergreen Apartment Cooperative Housing Society V/s Special Secretary, Revenue Department, Gujarat State reported in 1991(1) G.L.R. 113 and another decision in the case of Janardhan D Patel V/s State of Gujarat reported in 1997 (1) G.L.R. 50 and has submitted that the revenue authority while exercising the powers under the Bombay Land Revenue Code should not have examined the provisions of other enactment, more particularly, the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act even though very officer may be holding the powers under the other enactment. Therefore, it is submitted that the order passed by the Secretary (Appeals) in quashing and setting the revenue entry while hearing and deciding and considering the revenue entry only should not have passed the order of setting aside the revenue entry on the ground that the same will be in breach of the aforesaid Fragmentation Act, and, therefore, requested to allow the present special civil application.

#. Mr.Goswami, learned advocate appearing for respondent No.1 has tried to support the order passed by the Secretary (Appeals). Relying upon unreported judgment of the learned Single Judge of this Court (Coram : Jayant Patel,J) in the case of Jayantilal Jethalal Soni V/s State of Gujarat rendered in Special Civil Application No. 12547 of 2004 dated 28.09.2004, Mr.Goswami has submitted that when the revenue authority has come to know that by virtue of the transaction for which entry is to be mutated, and if the same is in breach of the provisions of any other enactment, more particularly, in the present case, the breach of the aforesaid Fragmentation Act and when the entry is set aside, it cannot be said that any illegality is committed by the authority. It is submitted that, on the contrary, the authority is justifying in not certifying the revenue entry and/or quashing and setting aside the revenue entry and, therefore, requested to dismiss the present

petition. Mr.Goswami also submitted that, apart from the fact that by virtue of the aforesaid transaction, there would be a breach of the provisions of the Fragmentation Act, the alleged sale deed dated 4.3.1995 itself is challenged by respondent No.1 - original land owner by way of Regular Civil Suit No.113 of 1996 and the civil suit is pending in the court of the learned Civil Judge (JD), Kalol.

#. Heard the learned advocates for the respective parties.

#. The dispute is with regard to the revenue entry in the record of right. As held by the Honourable Supreme Court as well as this Court in catena of judgments, revenue entry in the record of right does not confer any right, title or interest in favour of any party. The revenue entry in the revenue record is for the fiscal purpose and is for recovering and collecting the land revenue. Still, what is required to be considered in the present petition is, whether the revenue authority should have set aside the revenue entry only on the ground that the transaction in question is hit by any other enactment.

#. Considering the decision in the case of Evergreen Apartment Cooperative Housing Society (supra) and the decision in the case of Janardhan D Patel (supra), learned Single Judge of this Court has considered the scope and ambit of the revenue authority while exercising the powers under the Bombay Land Revenue Code in RTS proceedings in the case of Jayantilal Jethalal Soni V/s State of Gujarat, wherein in para 8, the Court has observed as under.:

> "8. Therefore, keeping in view of the aforesaid observations made by this Court in the above referred judgment, it appears that it would not be proper to hold that even if there are breaches under other enactment or such transfer is barred under the other enactment, the revenue authorities exercising power under Code could have ignored the same for the purpose of recording the mutation. At the same time, the authorities exercising power under the Code will have to exercise the jurisdiction within the limits of the statutory provisions of the Code. Therefore, on reconciling of both the aspects, it appears that in a case where the transfer of a land is made by registered sale deed and if the revenue authority prima facie is of the view that

such transfer is either barred under the other enactment or is resulting into a breach of other enactment or is to result into adversely affecting the rights under the other enactment and consequently sale is prohibited, then in that case, the appropriate course for the revenue authority would be to record the entry for registered sale deed with the express observations that the registered sale deed is prima facie in breach of the other enactment and simultaneously refer the matter to the competent authority under the other concerned enactment of which breach is committed and the entry should be made subject to the final decision which may be taken by the competent authority under the other concerned enactment. This court is inclined to take such view, because the one, who may be a bonafide purchaser or one who is interested to purchase the property would normally rely upon the revenue entry for enquiring into the title and the possession of the property. If the entry is certified on the basis of registered sale deed as it is, without recording for aforesaid qualification or clarification, the resultant effect would be that it will not be made known to the either person interested or to the other party who may act upon the revenue entry that the present transaction may be in breach of the other enactment and consequently it may result into not giving correct picture of the title or possession of the property in question in accordance with law. If the entry, on the basis of the sale deed is not at all effected, with the aforesaid qualification or without aforesaid qualification, it may also conversely mislead the public at large and also to those persons who act upon the revenue record, because there will be no recording of such transactions of registered sale deed which has the effect of conferring the right on property unless it is prohibited by the relevant statute under the other enactment or unless such sale deed is declared as null and void by the competent authority or through the process known to law. Therefore, it cannot be said that the authority exercising power under the Land Revenue Code has absolutely no jurisdiction to even prima facie consider the matter as to whether the breach of the other enactment is committed or not. At the most, it can be said that the authority exercising power under the code has no power to conclude as to

whether the breach of the other enactment by the impugned transfer or registered sale deed is made or not."

##. Considering the aforesaid three judgments, the orders passed by all three authorities below are modified to an extent that the revenue entry No.2912 would be subject to the ultimate outcome of the proceedings which may be initiated by the competent authority under the provisions of the Fragmentation Act and subject to the outcome of Regular Civil Suit No.113 of 1996 pending in the court of the learned Civil Judge (JD), Kalol, if any. It is further ordered that the appropriate authority is not precluded from initiating the proceedings for breach of the provisions of the Fragmentation Act and/or any other law if it is found by the appropriate authority that by virtue of the transaction in question, i.e. transaction between the petitioners and respondent No.1 with respect to the land in question. If there is any breach of the provisions of any other enactment, more particularly, the provisions of Fragmentation Act, they will be entitled to initiate the proceedings in accordance with law and the same can be decided on merits after giving opportunity to all concerned parties. The revenue authority is directed to make additional entry in the revenue record to the effect that the revenue entry No.2912 is subject to the ultimate outcome of the proceedings that may be initiated by the appropriate authority under the provisions of the Fragmentation Act and also subject to the ultimate outcome of Regular Civil Suit No.113 of 1996 pending in the court of the learned Civil Judge (JD), Kalol. Until the appropriate decision is taken by the appropriate authority under the provisions of the Fragmentation Act, the parties are directed to maintain status quo with regard to the revenue record, possession, title etc. in respect of the land in question.

##. For the reasons stated above, this petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct service is permitted.

(M.R.Shah,J)

(pathan)